

Marla Kaplan
July 25, 2023

Page 2

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SOCIETY, CITY OF COQUILLE, CITY OF)

COOS BAY, AND COOS COUNTY,)

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)

Cross-Defendants.)

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)

NICHOLAS JAMES MCGUFFIN, as an)

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individual and as guardian)

ad litem, on behalf of S.M.,)

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a minor,)

)

6

Plaintiffs,)

vs.)

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)

OREGON STATE POLICE,)

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Defendant.)

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DEPOSITION OF MARLA KAPLAN

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On Behalf of Oregon State Police

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Pursuant to Rule 30(b)(6)

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Taken in behalf of the Plaintiffs

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* * *

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Tuesday, July 25, 2023

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All Parties Appearing Remotely

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24

Reported by:

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Samantha Muncy, Notary Public

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Also Present:

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None

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BE IT REMEMBERED THAT, pursuant to the Oregon

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Rules of Federal Procedure, the deposition of MARLA KAPLAN

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was before Samantha Muncy, a Notary Public, in and for the

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state of Oregon, commencing at the hour of 1:08 p.m. on the

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25th day of July 2023, all parties appearing remotely.

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I N D E X

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Examination By:

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MS. PURACAL

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E X H I B I T S I N D E X

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Exhibit

9

Number

Description

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Exhibit 9

Case Jacket

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Exhibit 10

Evidence Receipt

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Exhibit 11

Case Chain-of-Custody Report

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Exhibit 12

Casework Protocol

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Exhibit 13

Casework Protocol

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Exhibit 14

Document from Department of

State Police Forensic

Laboratory Dated 8-27-2000

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Exhibit 8

Oregon State Police Forensic

Division Court Notebook

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Exhibit 15

Document from Department of

tate Police Forensic

Laboratory Dated 1-21-2002

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Exhibit 16

Gene Scan Results

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Exhibit 17

STR Analysis Casework

Procedures Manual

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Exhibit 18

E-mail Dated 2-1-2010 Subject:

Leah Freeman

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<p style="text-align: right;">Page 6</p> <p>1 MARLA KAPLAN, 2 after having been first duly sworn on oath by the Court 3 Reporter, testified under oath as follows: 4 5 EXAMINATION 6 7 8 BY MS. PURACAL: 9 Q. Ms. Kaplan, my name is Janis Puracal. I'm an 10 attorney for the plaintiffs in this matter. I understand 11 that you are appearing for the deposition today as a 12 designee of the Oregon State Police; is that correct? 13 A. Yes. 14 Q. And you understand that you are designated to 15 testify as to certain topics within a deposition subpoena. 16 Is that your understanding? 17 A. Yes. 18 Q. And do you understand that you're expected to 19 testify regarding all of the knowledge and information that 20 the Oregon State Police possesses on those particular topics 21 on which you are designated? 22 A. I do. 23 Q. Do you understand that your answers will binding 24 on the Oregon State Police? 25 A. Yes.</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. Another thing that you can do is to express 2 confusion out loud. So if I ask a poor question, you can 3 let me know and I will try and do better; okay? 4 A. Okay. 5 Q. And then another thing that we can do is just 6 avoid speaking over each other. So I will do my best to 7 wait for you to finish your answer before I start a 8 question. And if you could do your best to wait for me to 9 finish a question before you give an answer, that will help 10 our court reporter. Does that make sense? 11 A. It does. 12 Q. You understand that the transcript in this case 13 may be used at trial? 14 A. Yes. 15 Q. Are you suffering from any mental or physical 16 illnesses that may impact your ability to answer my 17 questions today? 18 A. No. 19 Q. And are you on any medication that a medical 20 professional has told you may impact your memory or ability 21 to recall? 22 A. No. 23 Q. There were some questions that we asked of 24 Mr. Hilsenteger on behalf of Oregon State Police that he 25 thought you may be in a better position to answer. And one</p>
<p style="text-align: right;">Page 7</p> <p>1 Q. And do consent to testify on behalf of the Oregon 2 State Police? 3 A. I do. 4 Q. I understand that Mr. Davis represents you and 5 that he is typically there at the OSP office, but maybe not 6 in the room with you; is that correct? 7 A. That's correct. 8 Q. You're free to take a break at any point in time 9 for any reason at all. Do you understand that? 10 A. I do. 11 Q. And you understand that you're under oath today? 12 A. Yes. 13 Q. Do you understand that that means you should give 14 the same careful and considerate answers that you would give 15 at -- if we were in a court -- a courtroom? 16 A. I do. 17 Q. And you understand we're making a transcript 18 today? 19 A. I do. 20 Q. And I know you've testified before, but I'm just 21 going to give you a couple of reminders on how we can make a 22 clean transcript. One way is to answer questions out loud. 23 Our court reporter can't take down if you nod your head or 24 shake your head. Does that make sense? 25 A. Yes.</p>	<p style="text-align: right;">Page 9</p> <p>1 of those was just a really basic question about when the DNA 2 unit was created at OSP. Do you know the answer to that? 3 A. I actually do not know the answer to that. 4 Q. Is there somebody at OSP that would know the 5 answer to that? 6 A. Certainly there's someone at OSP we could -- we 7 could ask and get you that information later. When you say 8 "the DNA unit," are you specifically talking about the type 9 of testing that's applied in this case or are you talking 10 about other Legacy technologies? 11 Q. Other Legacy technologies as well. I'm just 12 trying to understand when that unit first came in to be? 13 A. I can -- I can look through document archives to 14 see when the first procedures manual was published, and that 15 would -- would coincide roughly with the -- the -- the 16 creation of the unit. It certainly may not be date exact, 17 but it could give a timeframe. And I can look that up. 18 Q. Okay. Let's -- can we put that on a list for one 19 of the things that -- 20 A. Sure. 21 Q. You might need to follow up on? 22 A. Yeah. But to clarify, the date the DNA unit was 23 created? 24 Q. That's correct, yes. 25 A. And if we can't find the creation date, the -- the</p>

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<p style="text-align: right;">Marla Kaplan July 25, 2023</p> <p>1 Q. Are those topics on which the test was focused 2 that specific to DNA? 3 A. The tests are -- I -- I wouldn't use the word 4 "topics." They are samples upon which DNA testing is to be 5 performed. 6 Q. And it was specific to DNA as opposed to some 7 other discipline? 8 A. Correct. 9 Q. Is each test unique to the analyst or do all of 10 the analysts get the same test each year? 11 A. Currently or in 2000? 12 Q. In 2000? 13 A. I don't know the answer in 2000. There are only 14 so many test that are distributed by the external test 15 providers every year, so it would not be possible for every 16 analyst in the DNA section to have a bespoke external 17 proficiency test for each of those two proficiency test 18 cycles. So it's possible that they all took the same test 19 in the spring and they all took the same test in the fall. 20 But they may, half of them take one test in the spring, half 21 of them take a different test in the spring, another half of 22 them take a different test in the fall and another half of 23 them take a different test in the fall. Just depends on how 24 that program was run at the time. 25 Q. Did the unit supervisors get copies of the results</p>	<p style="text-align: right;">Page 20</p> <p>1 to complete. So even now with modern technology, 2 extraction all the way through report writing in a single 3 eight hour day, I'd say it's almost impossible. 4 Q. So probably can't do it within one day. Is it, on 5 average, looking at weeks or are we looking at days? 6 A. A lot of that is going to depend on the other 7 cases the analyst has in progress. It's going to depend on 8 the other duties the analyst has during that time. There's 9 I would say -- you know -- you know, I didn't work here in 10 2000, and I recognize that I'm a representative of OSP in 11 2000 as well, but the analytical turnaround time in 2000, I 12 think, just varied really widely from analyst to analyst, 13 depending on the case type. 14 Q. And then at some point, the DNA unit started 15 performing probabilistic genotyping. When did they start 16 that? 17 A. 2017. Let me correct. Very late 2016, with -- 18 with a smaller number of cases. 2017 was the full unit 19 transition to probabilistic genotyping. 20 Q. Mr. Hilsenteger talked a little bit about the 21 technical review prospects generally for the lab. I'm 22 trying to understand the process for the DNA unit 23 specifically, starting in 2000. When was technical review 24 required? 25 A. Always. Every case.</p>
<p style="text-align: right;">Page 19</p> <p>1 of those proficiency tests? 2 A. Per the policy, the unit supervisor should have 3 results of the proficiency tests, yes. 4 Q. When did the DNA unit start performing STR 5 testing? 6 A. The exact date? 7 Q. If you don't know the exact date, you can give me 8 a -- a year, if you know that. 9 A. The -- the year would be -- the -- the initial 10 protocols are dated in 1999. Whether those protocols were 11 developed in advance of the very first DNA test being 12 performed, I don't know. But 1999, 2000. 13 Q. In 2000, how long did the process take to get 14 through the steps from extraction through interpretation for 15 one sample? 16 A. For a single sample at a time from extraction 17 through interpretation? I could -- I could only speculate 18 as to -- as to that amount of time. It would depend on many 19 different factors, and so I -- I don't think I could -- I 20 don't think I can answer that question. 21 Q. Is it possible for the analyst to have performed 22 all of the steps within one day or were there set delays 23 between the steps? That's what I'm trying to understand. 24 A. There were set delays between the steps. Some of 25 the steps just take a certain amount of time from start to</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. And can you walk us through what that process 2 looked like? 3 A. The technical review process, you actually have to 4 take a step back to the analyst completes their case file. 5 So they -- they finish their supporting documentation, their 6 case notes, they write a draft analytical report. And so 7 when they have completed that case to -- to the -- the point 8 at which they are ready to advance it into the technical 9 review process, they will then pass it off to a technical 10 reviewer. At that point, technical review is a review of 11 all of the case notes and the other supporting documentation 12 and a view of the draft report to ensure that it meets all 13 of the division requirements and the disciplines 14 requirements to ensure that the report is supported by the 15 case notes and to ensure that the reported conclusions are 16 correct based on that supporting and underlying data. 17 Q. Is there a method that the lab had in place in 18 2000 for the technical reviewer to give feedback to the 19 analyst who performed the work? 20 A. Not that was informal. It was sometimes just 21 conversations, it would have been passing paperwork with 22 post-it notes with little comments on it back and forth. So 23 it was -- it was just handing off notes, be they verbal 24 notes, be their -- be their written notes. 25 Q. If there was notes, were those kept in the file?</p>

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<p>1 A. No.</p> <p>2 Q. Did that process of giving feedback change at any</p> <p>3 point before 2011?</p> <p>4 A. No.</p> <p>5 Q. And Mr. Hilsenteger mentioned supervisor review.</p> <p>6 That's reviewed by the unit supervisor; is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. And then the technical lead may be another level</p> <p>9 of review; is that correct?</p> <p>10 A. Technical lead may not -- if we're talking about</p> <p>11 levels of review, I don't know that the technical lead</p> <p>12 review is -- is -- is in some way ranked or ordered in</p> <p>13 relation to supervisor review. But the technical leader</p> <p>14 review is another type of review that is performed.</p> <p>15 Q. How is the supervisor review different than the</p> <p>16 technical review?</p> <p>17 A. I don't know how a supervisor review is performed.</p> <p>18 Q. Who would know that at OSP?</p> <p>19 A. That would be a question for Mr. Hilsenteger.</p> <p>20 Q. And that's including within the DNA unit?</p> <p>21 A. That should be, yes.</p> <p>22 Q. Then what about the technical lead review? How is</p> <p>23 that different from the technical review?</p> <p>24 A. So technical lead review -- and I'm going to --</p> <p>25 I'm going to pause real quick and close my e-mail because I</p>	<p>Marla Kaplan July 25, 2023</p> <p>Page 24</p> <p>1 see that there was a tech review, and there's the</p> <p>2 initials S.T.H. I understand that to be Susan Hormann; is</p> <p>3 that correct?</p> <p>4 A. Yes.</p> <p>5 Q. And I see that work was done by M.K. That's Mary</p> <p>6 Krings, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Then I see that there's a tech leader review,</p> <p>9 which I think that says CVD, Cecilia Von Beroldingen; is</p> <p>10 that it?</p> <p>11 A. I think it's Von Beroldingen. But yes, Cecilia.</p> <p>12 Q. And maybe you could spell that last name for the</p> <p>13 record. I'm sure I'm going to trip over it.</p> <p>14 A. I honestly think I have to look it up.</p> <p>15 Q. That's okay. We can look it up afterwards.</p> <p>16 A. Okay.</p> <p>17 Q. I -- actually, I have it here in my notes. So --</p> <p>18 A. Okay.</p> <p>19 Q. I understand her last name is V-O-N</p> <p>20 B-E-R-O-L-D-I-N-G-E-N. Does that sound right?</p> <p>21 A. Yes. That sounds correct.</p> <p>22 Q. Okay. And I don't see any supervisor review on</p> <p>23 here. Does that mean that there was no supervisor review</p> <p>24 for this particular set of work?</p> <p>25 A. That is my understanding of the process in place</p>
<p>Page 23</p> <p>1 hear it ding in the background and I do apologize for</p> <p>2 that.</p> <p>3 Q. That's okay. Go ahead.</p> <p>4 A. Just always open, so apologies.</p> <p>5 So the technical lead review is -- is done</p> <p>6 after the technical review, generally. It is done sometimes</p> <p>7 for -- for a really targeted reason, perhaps if a new</p> <p>8 technology or a new tool was brought online, a technical</p> <p>9 leader might just focus a review very narrowly on that new</p> <p>10 thing. Other times, a technical leader review might be a</p> <p>11 complete tech -- re-technical review of all of the work that</p> <p>12 was previously done. Other times, a technical leader review</p> <p>13 could just consist of a review of the analytical report.</p> <p>14 And I don't know, specifically, what types of technical</p> <p>15 leader review were being done in 2000. That would have to</p> <p>16 be a question for the specific technical leader at the time.</p> <p>17 Q. Okay. I'm going to show you a document here. It</p> <p>18 is what we have marked as Exhibit No. 9 to the deposition.</p> <p>19 (Exhibit No. 9 was marked.)</p> <p>20 Q. And my understanding is that this is the case</p> <p>21 jacket for this case. Is -- is that what you would call</p> <p>22 this?</p> <p>23 A. For the DNA work in this case, yes.</p> <p>24 Q. Okay. And I see that up here, for example, in the</p> <p>25 right-hand corner for this one particular set of requests, I</p>	<p>Page 25</p> <p>1 at the time.</p> <p>2 Q. And is that the same for these other sets of work</p> <p>3 where there's no supervisor review initials? That means</p> <p>4 there was no supervisor review for that?</p> <p>5 A. Based on my understanding of the overall process,</p> <p>6 yes.</p> <p>7 Q. And I can see that Ms. Hormann did the tech review</p> <p>8 for Ms. Krings' work in 2000 and then also in 2001; is that</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. And then I can see here -- keep going to this next</p> <p>12 page. For that set of work in 2002, I can see that</p> <p>13 Ms. Hormann did the tech review for Ms. Krings' work there</p> <p>14 as well?</p> <p>15 A. Yes. Based on this, that looks correct.</p> <p>16 Q. And then in 2010, I see that it was Ms. Hormann</p> <p>17 who completed the work; is that right?</p> <p>18 A. Yes.</p> <p>19 Q. And I can't tell whose initials these are for tech</p> <p>20 review. Can you tell?</p> <p>21 A. I recognize those initials as being from Deborah</p> <p>22 Newville, a DNA analyst. But our official record of</p> <p>23 technical review is found within our Laboratory Information</p> <p>24 Management System or our LIMS system. So I could look up to</p> <p>25 confirm that.</p>

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<p style="text-align: right;">Page 62</p> <p>1 interpretation threshold that we're talking about for 2000?</p> <p>2 A. So DNA -- DNA results are reflected in terms of a</p> <p>3 unit of measurement called "relative fluorescent units."</p> <p>4 Basically part of our DNA analysis process is to analyze DNA</p> <p>5 fragments and make them glow. And how intensely they're</p> <p>6 glowing is corresponds to their fluorescence or relative</p> <p>7 fluorescent unit. And those units are measured by</p> <p>8 instrumentation that we use. And so in 2000, the</p> <p>9 interpretation threshold was a hundred and 50 relative</p> <p>10 fluorescent units or RFU for short.</p> <p>11 Q. And so I'm going to -- I'm going to go back to a</p> <p>12 question that I asked. Was there a written protocol that</p> <p>13 gave analysts discretion to choose whether to interpret the</p> <p>14 data below that 150 threshold?</p> <p>15 A. There was a written protocol that discussed the</p> <p>16 use of peaks below a hundred and 50 that used the word</p> <p>17 "may," which implied discretion.</p> <p>18 Q. Which protocol are you referring to?</p> <p>19 A. That would be both in the 2000 -- let me find it.</p> <p>20 Sorry. That language would in the 8/1/2000 and 4/9/2001</p> <p>21 protocols. And maybe in others as well, but I specifically</p> <p>22 know it's in those two protocols.</p> <p>23 Q. And I'm going to share my screen with you and go</p> <p>24 back to Exhibit 12. And this is the August 1st, 2000</p> <p>25 protocol. And I'm looking at PDF page 30 here. Is this the</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Were there factors that the lab established to</p> <p>2 guide the analysts' discretion whether to interpret data</p> <p>3 below the 150 threshold in 2000?</p> <p>4 A. I don't know.</p> <p>5 Q. Who would know the answer to that?</p> <p>6 A. I don't know.</p> <p>7 Q. In 2000, how did the lab train its analysts to</p> <p>8 exercise their discretion whether to interpret data below</p> <p>9 the 150 threshold?</p> <p>10 A. Part of the training program would be to look at</p> <p>11 data of varying strengths. And so that would have been</p> <p>12 covered during the analyst training.</p> <p>13 Q. Is that the training pursuant to the training</p> <p>14 manual that we've talked about?</p> <p>15 A. Yes.</p> <p>16 Q. In 2000, how did the lab supervise the analysts in</p> <p>17 their exercise of discretion as to whether to interpret data</p> <p>18 below the 150 threshold?</p> <p>19 A. I don't know that "supervise" is the right term.</p> <p>20 The lab would monitor the application of this threshold</p> <p>21 through the technical review, technical leader review,</p> <p>22 supervisor review process.</p> <p>23 Q. How would the technical reviewer make sure that</p> <p>24 the analyst -- that the analyst exercised her discretion</p> <p>25 appropriately to interpret data below the 150 threshold?</p>
<p style="text-align: right;">Page 63</p> <p>1 language that you're looking at? The -- under subs three</p> <p>2 where it says, "Peak heights less than 150 RFU may be</p> <p>3 interpreted with caution"?</p> <p>4 A. Yes. That's the language I'm referencing.</p> <p>5 MR. DAVIS: What's the exhibit number?</p> <p>6 (Stenographer asks for</p> <p>7 clarification.)</p> <p>8 MS. PURACAL: I'm sorry, Mr. Davis. I could</p> <p>9 not understand that.</p> <p>10 MS. COFFIN: I -- I was just asking for the</p> <p>11 exhibit number. It's covered by a -- some -- something on</p> <p>12 my screen covers the exhibit number.</p> <p>13 MS. PURACAL: It's Exhibit No. 12.</p> <p>14 MR. DAVIS: Thank you.</p> <p>15 BY MS. PURACAL: (Continuing)</p> <p>16 Q. In 2000, if the analyst chose to interpret data</p> <p>17 below the 150 threshold, did the lab have a protocol that</p> <p>18 gave analysts discretion to choose whether to report that</p> <p>19 interpretation?</p> <p>20 A. So -- so we go back to the -- the linear process.</p> <p>21 If something is interpreted and a conclusion is drawn, then</p> <p>22 it goes on the report.</p> <p>23 Q. Where is that stated in the protocols?</p> <p>24 A. That's sort of a combined application of the</p> <p>25 protocol as a whole.</p>	<p style="text-align: right;">Page 65</p> <p>1 A. Part of the technical reviewer -- part of the</p> <p>2 technical reviewer's role is to determine whether or not</p> <p>3 they concur with the data assessment, interpretation,</p> <p>4 conclusions and reportings, so that would have been built</p> <p>5 into that technical review process.</p> <p>6 Q. One of the -- one of the questions that</p> <p>7 Mr. Hilsenteger deferred to you on was a question that I</p> <p>8 asked him about Brady and whether the lab, specifically the</p> <p>9 DNA unit, put any limits on the analyst's discretion in</p> <p>10 light of Brady obligations. Meaning, if the analyst saw</p> <p>11 data that was below threshold, being aware that the analyst</p> <p>12 has Brady obligations, how did those two things work</p> <p>13 together?</p> <p>14 MS. COFFIN: I will just object that it's a</p> <p>15 compound hypothetical. And is -- is -- is vague and</p> <p>16 ambiguous. Go ahead if you can.</p> <p>17 THE WITNESS: The analyst is responsible for</p> <p>18 interpreting the data and drawing conclusions from the data.</p> <p>19 They then report that. Not interpreting data is -- was not</p> <p>20 at the time considered Brady material. It is considered an</p> <p>21 interpretation of scientific data. And so therefore, that</p> <p>22 distinction -- there -- there's a big distinction between</p> <p>23 data interpretation and -- and application of scientific</p> <p>24 expertise and -- and Brady obligations.</p> <p>25 Q. Was that written down anywhere for the lab</p>

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<p style="text-align: right;">Page 70</p> <p>1 A. No.</p> <p>2 Q. In 2000, did the lab have a protocol that required</p> <p>3 the analyst to determine the number of contributors?</p> <p>4 A. To exact number of contributors? I don't know if</p> <p>5 it was specifically spelled out. That would also be in that</p> <p>6 Interpretation section in that manual.</p> <p>7 Q. Did the lab require the analyst to report a number</p> <p>8 of contributors?</p> <p>9 A. No.</p> <p>10 Q. Is it the lab's position that Ms. Krings</p> <p>11 documented her work appropriately in 2000 and 2002?</p> <p>12 A. By the protocols in place at the time, yes.</p> <p>13 Q. Has the lab determined whether there were</p> <p>14 incorrect results reported to the prosecutor for any of the</p> <p>15 samples tested in the criminal case against Mr. McGuffin?</p> <p>16 A. Any of the samples? Or are we specifically</p> <p>17 discussing the DNA results?</p> <p>18 Q. The DNA results.</p> <p>19 A. The lab has not determined any issues with the DNA</p> <p>20 results as reported in 2000, under those protocols.</p> <p>21 Q. I'm going to share my screen with you again here,</p> <p>22 I'm going to show you what I have marked as Exhibit 16 to</p> <p>23 your deposition.</p> <p>24 (Exhibit No. 16 was marked.)</p> <p>25 Q. This is a copy of the gene scan results notes from</p>	<p style="text-align: right;">Page 72</p> <p>1 also be an appendix to the protocol itself, which had</p> <p>2 several example worksheets in it.</p> <p>3 Q. So we -- we talked about the lab's policy for</p> <p>4 interpreting peaks below the 150 threshold. At some point,</p> <p>5 that threshold changed. It was lowered to 100; is that</p> <p>6 right?</p> <p>7 A. Yes.</p> <p>8 Q. When did the lab make that change?</p> <p>9 A. I don't know specifically when that change was</p> <p>10 made.</p> <p>11 Q. I'm going to show you what I have marked here as</p> <p>12 Exhibit 17 to the deposition.</p> <p>13 (Exhibit No. 17 was marked.)</p> <p>14 Q. This is a copy of the lab's casework procedures</p> <p>15 manual, and it's dated here at the bottom. You can see</p> <p>16 revised October 22, 2009. Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. If I go all the way to the last page -- or sorry.</p> <p>19 The second to the last page, PDF page 71, I can see their</p> <p>20 revision history here. And I can see -- if we scroll down a</p> <p>21 little bit here, I can see that it says, the "Interpretation</p> <p>22 threshold to 100 RFU." And that happened in the October 15,</p> <p>23 2007 manual. Does that help to tell us when the threshold</p> <p>24 was lowered to 100 RFUs?</p> <p>25 A. This is just a summary of the changes and they</p>
<p style="text-align: right;">Page 71</p> <p>1 Ms. Krings. I see her initials here at the top. Do you see</p> <p>2 that?</p> <p>3 A. Yes.</p> <p>4 Q. And this is related to the shoe results; correct?</p> <p>5 A. Yes.</p> <p>6 Q. And down here at the bottom, there's a key. Right</p> <p>7 in the middle, there's a couple of hole punches. Can you</p> <p>8 tell what information we're missing here in the second</p> <p>9 seeing column -- actually, the first, second and third</p> <p>10 column where there's hole punches?</p> <p>11 A. I can -- I can certainly make some educated</p> <p>12 guesses based on my DNA expertise, but I -- I can sort of</p> <p>13 reserve the right to not get it quite right, I guess I</p> <p>14 should say.</p> <p>15 Q. Sure.</p> <p>16 A. So the "NC," I'm not sure. The "PU" would be</p> <p>17 "pull up," which is an artifact of the analytical process</p> <p>18 that we use. "Minus A" would equal Minus A shoulder," which</p> <p>19 is another artifact of our process. "Mx" equals "mixture."</p> <p>20 And the "DL," I think, references some sort of deletion of</p> <p>21 data from an analysis project based on either not needing</p> <p>22 the particular sample or based on poor quality data.</p> <p>23 Q. Does the lab have any copies of this form that</p> <p>24 don't have the hole punches in them?</p> <p>25 A. I'm sure we do. This may -- this -- this form may</p>	<p style="text-align: right;">Page 73</p> <p>1 were -- this -- this wasn't applied in the 2000 one, but</p> <p>2 there were also sort of multiple analytical pathways that --</p> <p>3 that a -- a sample could go through and then meet the</p> <p>4 obligation of a threshold. So it's unclear to me whether --</p> <p>5 which -- which analytical pathway this refers to. I -- I --</p> <p>6 I recall that the 150 to 100 RFU threshold was dropped</p> <p>7 sometime in 2004 or '05. So the -- the 2007 would have been</p> <p>8 the samples that went down a different analytical pathway</p> <p>9 than the sample in this case.</p> <p>10 Q. What about the -- for the samples in this case,</p> <p>11 when was the threshold lowered to 100 RFUs?</p> <p>12 A. So for the samples in this case in 2000, they were</p> <p>13 interpreted under the threshold that was in place at the</p> <p>14 time. Sometime between 2000 and 2016 -- and this</p> <p>15 information is in our casework manuals. And I -- I vaguely</p> <p>16 remember it was sometime in 2004. The threshold was lowered</p> <p>17 from a hundred and 50 to 100. And then -- you know, I want</p> <p>18 to look that up to make sure that I am correct. Is that</p> <p>19 information that I could get you later, the exact date</p> <p>20 that -- it would be very helpful if I could get you that</p> <p>21 information at a later date, the exact protocols in which</p> <p>22 the threshold changes were made.</p> <p>23 Q. That's fair to me as well. So why don't we put</p> <p>24 that on the list?</p> <p>25 A. Okay.</p>

Marla Kaplan
July 25, 2023

CERTIFICATE

I, Samantha Muncy, a Court Reporter and Notary Public, do hereby certify that, pursuant to the Oregon Rules of Federal Procedure, MARLA KAPLAN, personally appeared before me at the time and place mentioned in the caption herein; that the witness was by me first duly sworn on oath and examined upon oral interrogatories propounded by counsel; that said examination, together with the testimony of said witness, was taken down by me in stenotype and transcribed through computer-aided transcription; and that the foregoing transcript constitutes a full, true and accurate record of said examination of and testimony given by said witness, and of all other oral proceedings had during the taking of said deposition, and of the whole thereof.

Witness my hand at Portland, Oregon, this 9th day of August 2023.



Samantha Muncy
Notary No. 1015962
Expires August 23, 2025

Marla Kaplan Volume II 30(b)(6)
December 12, 2023

Marla Kaplan Volume II 30(b)(6)
IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

NICHOLAS JAMES MCGUFFIN, as)	
an individual and as)	
guardian ad litem, on behalf)	
of S.M., a minor,)	
Plaintiffs,)	
vs.)	
MARK DANNELS, et al.,)	Civil No. 6:20-cv-01163-MK
Defendants.)	(Lead Case)
<hr/>		
VIDOCQ SOCIETY,)	
Cross-Claimant,)	
vs.)	
MARK DANNELS, et al.,)	
Cross-Defendants.)	
<hr/>		
NICHOLAS JAMES MCGUFFIN, et)	
al.,)	
Plaintiffs,)	Civil Case No.
vs.)	3:21-cv-01719-MK
OREGON STATE POLICE,)	(Trailing Case)
Defendant.)	
)	

30(B)(6) DEPOSITION OF OREGON STATE POLICE

by and through

MARLA KAPLAN

VOLUME II

DATE: December 12, 2023

REPORTED BY: Lori L. Thielmann, RPR, CCR #21-0014
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A P P E A R A N C E S (All parties appearing via videoconference.) FOR PLAINTIFFS: JANIS C. PURACAL ANDREW C. LAUERSDORF Maloney Lauersdorf Reiner PC 1111 East Burnside Street, Suite 300 Portland, OR 97214 503.245.1518 jcp@mlrlegalteam.com acl@mlrlegalteam.com FOR DEFENDANTS OREGON STATE POLICE, JOHN RIDDLE, SUSAN HORMANN, MARY KRINGS, AND KATHY WILCOX: JESSE B. DAVIS Oregon Department of Justice 100 SW Market Street Portland, OR 97201 jesse.b.davis@doj.state.or.us FOR DEFENDANTS CITY OF COQUILLE, CITY OF COOS BAY, COOS COUNTY, CRAIG ZANNI, CHRIS WEBLEY, ERIC SCHWENNINGER, SEAN SANBORN, RAY MCNEELY, KRIS KARCHER, PAT DOWNING, MARK DANNELS, KIP OSWALD, MICHAEL REAVES, DAVID ZAVALA, ANTHONY WETMORE, SHELLY MCINNES: SARAH R. HENDERSON Law Office of Robert E. Franz, Jr. P.O. Box 62 Springfield, OR 97477 shenderson@franzlaw.comcastbiz.net FOR DEFENDANT VIDOCQ SOCIETY: ANTHONY R. SCISCIANI III HWS Law Group 101 SW Main Street, Suite 1605 Portland, OR 97204 ascisciani@hwslawgroup.com		VIDEOCONFERENCE DEPOSITION OF MARLA KAPLAN VOLUME II EXAMINATION INDEX EXAMINATION BY Ms. Puracal..... 93 Mr. Davis..... 116 Ms. Puracal..... 120 EXHIBIT INDEX EXHIBIT DESCRIPTION FOR ID Exhibit 12 Oregon State Police Portland Forensic Laboratory DNA Unit, Short Tandem Repeat (STR) Analysis Casework Protocol SW001758-1820 01/21/2002 Letter MK000241-242 105 Exhibit 21 12/21/2023 E-mail from Mr. Davis to Ms. Puracal 94 Exhibit 22 Department of State Police Media Relations, Revised 01/08/2010 OSP024122-126 113 Exhibit 23 Brady Training Module OSP030013 114
A P P E A R A N C E S (Contd.) FOR DEFENDANT RICHARD WALTER: ERIC S. DEFREEST Luvaas Cobb 777 High Street, Suite 300 Eugene, OR 97401 edefreest@luvaascobb.com * * * * *		Page 91
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CLACKAMUS, OREGON; DECEMBER 12, 2023 9:02 A.M. MARLA KAPLAN, deponent herein, being first duly sworn on oath, was examined and testified as follows: -oOo- EXAMINATION BY MS. PURACAL: Q. Good morning, Ms. Kaplan. My name is Janis Puracal. I represent the plaintiffs in this matter. You and I have met before on deposition. Can you give us your first and last full name and spelling for the record? A. My name is Marla Kaplan, M-A-R-L-A; last name K-A-P-L-A-N. Q. And can you give us your title as well? A. I'm the DNA technical leader for the Oregon State Police. Q. You're appearing today for deposition as a designee of the Oregon State Police; is that correct? A. Yes. Q. You testified as a designee for the Oregon		

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<p style="text-align: center;">Marla Kaplan Volume II 30(b)(6) December 12, 2023</p> <p>1 THE WITNESS: There was no minimum number of 2 alleles required. 3 BY MS. PURACAL: 4 Q. So, for example, in this case, there were only 5 two alleles above threshold. Under the OSP policies, 6 that was sufficient to call something consistent with? 7 MR. DAVIS: Objection. Assumes facts not in 8 evidence. Mischaracterizes. Vague and ambiguous. 9 BY MS. PURACAL: 10 Q. You can answer. 11 A. I don't know the number of specific alleles at 12 that threshold in this particular item, but I go back to 13 there was no minimum number of alleles required. 14 Q. In 2000, were analysts trained on how many 15 alleles they should be looking for to determine whether 16 there was a match? 17 A. Training consisted of looking at a number of 18 DNA profiles of varying quality to include mixed DNA 19 samples. Because there are no requirements related to 20 the number of matching or non-matching alleles, the 21 numbers wouldn't have been part of the training. The 22 training would have been on the protocol which did not 23 have any number of required matching alleles. 24 Q. In 2000, did the lab have a policy that allowed 25 the analyst to report that the evidentiary profile was</p>	<p style="text-align: right;">Page 108</p> <p>1 Was it the case that in 2004, that number was 2 dropped in item number 3 to 100? 3 A. That number was dropped in item number 3. 4 There may have been other associated changes to that 5 language, but any sort of 150 RFU as a cap was lowered 6 to 100. 7 Q. When that threshold was lowered to 100, what 8 did the lab do to train analysts on the lowered 9 threshold? 10 A. My understanding -- my understanding from 11 people who were in the unit at the time is that when a 12 protocol update was released, that the group would 13 discuss the protocol update and they would have -- it 14 would be part of a regular DNA meeting. 15 Depending on the scope of the change, sometimes 16 there would be supplemental training. But most often it 17 was just a discussion at a DNA meeting about the changes 18 being made to the protocol. There was no formal 19 training other than something that would have been 20 discussed at a meeting. There are no training records 21 related to this protocol update that I could locate. 22 Q. Susan Hormann was at the lab at that time in 23 2004; is that correct? 24 A. I understand that to be true, yes. 25 Q. So she would have been included in those</p>
<p style="text-align: right;">Page 107</p> <p>1 consistent with a reference standard if there were 2 alleles below thresholds that did not match? 3 MR. DAVIS: Objection. Vague. Incomplete 4 hypothetical. 5 BY MS. PURACAL: 6 Q. You can answer. 7 A. I site the policy from earlier, the analyst was 8 required to consider them but the results of that 9 consideration was not dictated by policy. 10 Q. We looked at the lab's policy for interpreting 11 the peaks between 50 and 150 RFUs and at some point that 12 policy changed and the threshold was lowered to 100 13 RFUs. When did the lab make that -- 14 A. That policy was changed in June of 2004. 15 Q. How was that documented? 16 A. The protocol was updated to include the change 17 from 150 to 100. 18 Q. I don't have the 2004 policy yet and I 19 understand that we are still waiting on some documents 20 from OSP but if I share my screen with you and we go 21 back to Exhibit 12 that we looked at before, we're 22 looking at page 30, and we were looking at that item 23 number 3 that says peak heights should be a minimum of 24 150 relative fluorescent units, RFU. Peak heights less 25 than 150 RFU may be interpreted with caution.</p>	<p style="text-align: right;">Page 109</p> <p>1 discussions about the lowered threshold? 2 A. Conceivably, if she was -- 3 MR. DAVIS: Objection. Calls for 4 speculation. Go ahead if you can answer. 5 THE WITNESS: I can say it would have been 6 practice for her to be there, but if she had court or 7 another obligation or was not in a lab that day, I don't 8 know if she would have attended that meeting. At a 9 minimum, she would have been required to read the 10 updated manual. 11 BY MS. PURACAL: 12 Q. When we talked during the earlier deposition, 13 you said that once the threshold was lowered to 100 14 RFUs, analysts who were performing additional testing in 15 a case could decide to go back and look at data that had 16 been generated before the threshold was lowered. 17 Were the analysts required to go back and look 18 at the historical data if they were still working on 19 samples in that case? 20 MR. DAVIS: I'm going to object to the 21 extent that the question mischaracterizes previous 22 testimony. You may answer if you're able. 23 THE WITNESS: It was not required. 24 BY MS. PURACAL: 25 Q. In 2017, did lab policy require that Susan</p>

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<p style="text-align: center;">Marla Kaplan Volume II 30(b)(6) December 12, 2023</p>	<p style="text-align: right;">Page 112</p>
<p>1 Hormann review the data that had been generated during the testing on Ms. Freeman's shoes that was done in 2000?</p> <p>2</p> <p>3</p> <p>4 MR. DAVIS: Objection. Vague. Ambiguous and incomplete. Go ahead.</p> <p>5</p> <p>6 THE WITNESS: Can you repeat the question, please?</p> <p>7</p> <p>8 BY MS. PURACAL:</p> <p>9 Q. Sure. In 2010, did the lab's policy require that Susan Hormann review the data that had been generated during the testing on Ms. Freeman's shoes that had been completed in 2000?</p> <p>10</p> <p>11</p> <p>12</p> <p>13 MR. DAVIS: Same objections. Go ahead.</p> <p>14</p> <p>15 THE WITNESS: I don't know what the policy explicitly said at the time. Those policies are available but I don't know what they said.</p> <p>16</p> <p>17 BY MS. PURACAL:</p> <p>18 Q. Which policy would we be referring to?</p> <p>19</p> <p>20 A. We'd need to look at the --</p> <p>21</p> <p>22 MR. DAVIS: Same objections since we're asking a question about policy regarding the previous question. I'll just incorporate the previous objections. Go ahead.</p> <p>23</p> <p>24</p> <p>25 THE WITNESS: We'd need to look at the STR analysis casework procedures manual. We'd need to look</p>	<p>1 in 2010 to look at the historical data?</p> <p>2</p> <p>3 MR. DAVIS: I'm going to object here for all the previous reasons and I'm also going to assert anything -- any questions -- any issues related to attorney-client privilege for work product done in preparation for this litigation. Don't identify any such discussions.</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 THE WITNESS: I don't know how to answer that. So I may have -- I may have looked into that at some point. I don't have any -- necessarily any documentation that I did so that I can think of, so I just -- someone else may have looked into that, I don't know, but I can only speak for myself at the lab and I may have looked into the requirements at the time but don't have recollection of having done so over the years this case has progressed.</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 BY MS. PURACAL:</p> <p>19</p> <p>20 Q. And I understand that you can only speak for yourself. But today you're speaking on behalf of OSP, so I'm asking generally about OSP and whether OSP has a position on this. And so my understanding of your answer to that is you're not aware of OSP's position on this; is that correct?</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 A. I feel like we're confusing two questions. I</p>
<p style="text-align: right;">Page 111</p>	<p style="text-align: right;">Page 113</p>
<p>1 at the DNA quality manual. We'd need to look at the operations manual and we'd need to look at the quality assurance, the Forensic Services Division quality assurance manual to see if there were any requirements describing what was expected of an analyst when preparing additional work on a previously analyzed case.</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7 BY MS. PURACAL:</p> <p>8</p> <p>9 Q. Does the OSP lab have a position about whether Susan Hormann was required to go back and look at that historical data back in 2010?</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 feel like you asked me what OSP's position on whether Susan was required to go back and look at that data was and that would have been dictated by policy or procedure. My understanding of your supplemental question was whether anybody ever had looked into this and that information I don't know.</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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I, LORI L. THIELMANN, Oregon CSR Number 21-0014,
Washington CSR Number 21002182, do hereby certify that
prior to the commencement of the examination, MARLA
KAPLAN, was duly remotely sworn by me to testify to the
truth, the whole truth, and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a
verbatim transcript of the testimony as taken
stenographically by me at the time, place, and on the
date hereinbefore set forth to the best of my ability.

I DO FURTHER CERTIFY that I am neither a
relative, nor employee, nor attorney, nor counsel of any
of the parties to this action, and that I am neither a
relative, nor employee of such attorney or counsel, and
that I am not financially interested in the action.

WITNESS WHEREOF, I have hereunto set my hand and
seal this 27th day of December, 2023.



LORI L. THIELMANN, RPR, CCR
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Washington License No. 21002182